IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) NO. 93 of 2007

Provident Fund Inspector,
Shri Himesh Ranjan Prakash,
S/o Shri P. S. Manuj, 39 years,
E.P.F.O., Bhavishya Nidhi Bhavan,
24, Patto Plaza,
PANAJI – GOA ... Applicant

versus

1. Shri Ramchandra Bandodkar,
   major in age, resident of
   Escrivao Vaddo, Candolim,
   Calangute Goa.

2. Ms. Rashmila Ramchandra
   Bandodkar, wife of
   Shri Ramchandra Bandodkar,
   Major in age, resident of
   Escrivao vaddo, Candolim,
   Calangute Goa.

3. Shri Gurudas Bandodkar,
   major in age,
   R/o Escrivao vaddo,
   Candolim, Calangute Goa. ... Respondents

Mr. P. P. Singh, Advocate for the Applicant.

Mr. A. V. Nigalye, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 5TH JULY, 2007.

ORAL ORDER

Heard the learned Counsel on behalf of the Applicant/Complainant, and the Respondents/Accused.

2. This petition has been filed by the said Complainant to assail the Order dated 25-1-2006 of the learned Additional Sessions Judge, Panaji.

3. The Complainant who is a Provident Fund Inspector had prosecuted M/s. Pushparti Packs Pvt. Ltd., through its Director, the Respondent No.6, as Accused No.1, and Accused Nos.2 to 6 who were its Directors, under Sections 14(1-A) and 14(A) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952(Act, for short).

4. Process for the said offences was issued by Order dated 28-1-2005 by the learned J.M.F.C. but three of the Directors of the said Company/A-1, namely, A-2 to A-4(the Respondents herein) challenged the said order in a revision petition before the Court of Sessions and the said revision petition was allowed by the learned Additional Sessions Judge, by Order dated 25-1-2007.

5. There is no dispute that the complaint filed is otherwise proceeding against the said Company/A-1 and two of its Directors, namely, A-5 and A-6.

6. The complaint was filed with the allegation that Accused Nos.2 to 6 were the persons in charge of the establishment of the Company/A-1 and were responsible to it for the conduct of its business and as such they were required to comply with all the provisions of the Act and the Scheme framed thereunder, in respect of the said establishment of the Company/A-1.

7. At the hearing of this petition, Mr. P. P. Singh, the learned Counsel on behalf of the Complainant, has drawn my attention to the definition of the expression “employer” in Clause 2(e) and to the definition of an “occupier” in Clause (k) of Section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

8. In terms of Section 2(e) of the said Act “employer” means -

> (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named; and

> (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

Clause (k) of Section 2 of the said Act defines-

> "occupier of a factory" to mean the person who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.

9. The contention of the learned Counsel on behalf of the Complainant is that all the Directors who were impleaded as Accused fit in the definition of the "occupier of a factory" since they are in ultimate control of the affairs of the factory.

10. On the other hand, the learned Counsel on behalf of the Respondents has placed reliance on the decision of this Court in **Transport Corporation of India Limited and others** v. **R. M. Gandhi and others**(1991 LAB.I.C.2017) and **Sharad Mittersain Jain and others** v. **State of Maharashtra**(2004 I CLR 971).

11. The controversy sought to be raised on behalf of the Complainant is no longer res integra and has been decided by this Court in the case of **Transport Corporation of India Limited and others** v. **R. M. Gandhi and others**(supra) and relying on the same that the learned Additional Sessions Judge has quashed the process issued against the Respondents i.e. Accused Nos.2 to 4 in the said criminal case. There is no decision to the contrary of this Court or of the Apex Court cited on behalf of the Applicant. This Court, in para 22 observed as follows:

> "In the face of these elaborate provisions, it is difficult to accept that the Provident Fund authorities can, in a complaint filed under the provisions of the Act, make a bald averment that some person is in charge of the establishment and that would satisfy the requirements of law. The judgment of the Karnataka High Court in Anantharamaiah Woolen Factory's case (1981 Lab IC 538)(supra) relied upon by Shri Bhogani in this connection is very apposite. The intention of the Legislature in making the elaborate provisions, reproduced hereinabove, is to ensure that, at all given times, there is readily available a person or persons who is/are directly responsible for implementation of the provisions of the Act in the establishment and, conversely, answerable for breach of the provisions thereof. In the face of these provisions, it would be futile to vaguely aver in the complaint that all the directors named in the complaint are in charge of the establishment and responsible for the conduct of its business. I am, therefore, in respectful

> agreement with the view taken by the Karnataka High Court in Anantharamaiah Woollen Factory's case(supra) that it is not enough to make a bald allegation in the complaint by reproducing the language of the section to attract the provision of Section 14A(2) of the Act. The facts essential to constitute the offence falling under Section 14A(2) have to be alleged and in the absence of such necessary factual allegations attracting the provision of Section 14A(2), it cannot be said that the prosecution launched and the cognizance taken thereof by the Magistrate against the accused is proper. I am, therefore, of the view that the process issued against accused 2 to 14(present petitioners 2 to 14) is the result of total non-application of mind on the part of the learned Magistrate in disregard of the settled law on the subject, which is liable to be quashed by this Court in the exercise of its power under Section 482 of the Code of Criminal Procedure, 1973".

12. In the light of the above, the finding of the learned Additional Sessions Judge could not be faulted.

13. Petition dismissed.

N. A. BRITTO, J.

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